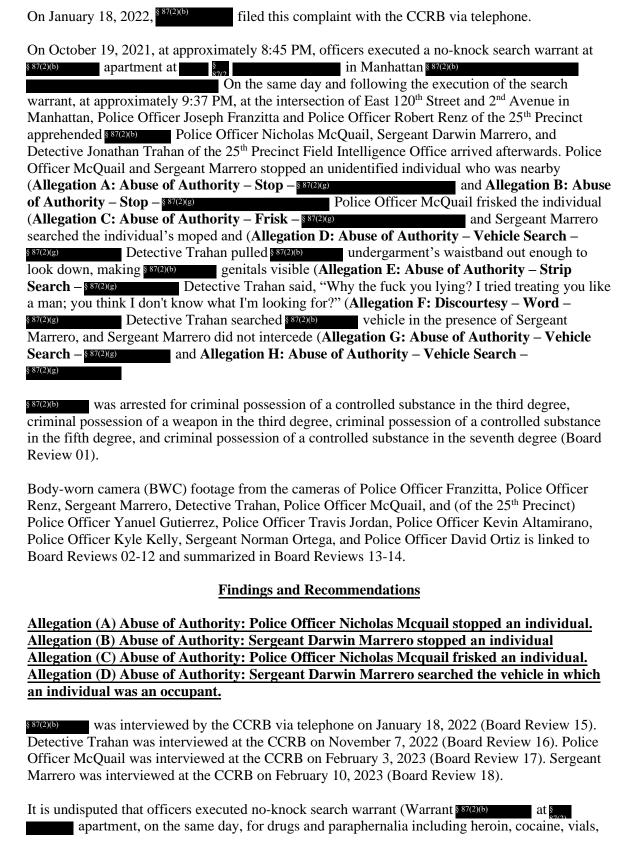
CCRB INVESTIGATIVE RECOMMENDATION

Investigator:		Team:	CCRB Case #:		Force	$\overline{\mathbf{V}}$	Discourt.	U.S.
Rachel Murgo		Squad #04	202200388	Ø	Abuse		O.L.	☐ Injury
Incident Date(s)		Location of Incident:			18 N	Io. S0	OL	Precinct:
Tuesday, 10/19/2021 9:37 PM		2nd Avenue and East 120th Street			4/19/2023		25	
Date/Time CV Reported		CV Reported At:	How CV Reported:	<u> </u>	Date/Time	e Rece	eived at CC	RB
Tue, 01/18/2022 3:33 PM		CCRB	Phone		Tue, 01/18	8/2022	2 3:33 PM	
Complainant/Victim	Type	Home Addre	ess		•			
Subject Officer(s)	Shield	TaxID	Command					
1. PO Nicholas Mcquail	24018	963347	INT FIO PRG					
2. SGT Darwin Marrero	03774	946693	INT FIO PRG					
3. DT3 Jonathan Trahan	03627	955590	INT FIO PRG					
Witness Officer(s)	Shield N	o Tax No	Cmd Name					
1. PO Joseph Franzitta	16273	961769	025 PCT					
2. PO Robert Renz	10375	961158	025 PCT					
3. CPT Christian Hernandez	00000	928473	032 PCT					
Officer(s)	Allegatio	on			Inve	estiga	ator Recor	nmendation
A . PO Nicholas Mcquail	Abuse: Police Officer Nicholas Mcquail stopped an individual.							
B . SGT Darwin Marrero	Abuse: S	ergeant Darwin Marrero	stopped an individu	ıal.				
C . PO Nicholas Mcquail	Abuse: Police Officer Nicholas Mcquail frisked an individual.							
D . SGT Darwin Marrero	Abuse: Sergeant Darwin Marrero searched the vehicle in which an individual was an occupant.							
E . DT3 Jonathan Trahan	Abuse: Detective Jonathan Trahan strip-searched § 87(2)(b)							
F . DT3 Jonathan Trahan	Discourtesy: Detective Jonathan Trahan spoke discourteously to \$87(2)(b)							
G . DT3 Jonathan Trahan	Abuse: Detective Jonathan Trahan searched the vehicle in which was an occupant.							
H . SGT Darwin Marrero	Abuse: Sergeant Darwin Marrero searched the vehicle in which \$ 87(2)(b) was an occupant.							

Case Summary



caps, glassine envelopes, and firearms. DD5s (Board Review 19, page 22) further list, "quantity of crack cocaine, heroin, suboxone, cocaine, unknown powdery substance, unknown pill, paraphernalia." Seized from the apartment were one glassine of heroin, one bottle of cocaine, 23 suboxone packs, and a bag of unknown blue powder. These items were recovered in a bedroom and on person. Police Officer McQuail's memo book (Board Review 34) notes that a quantity of an unspecified controlled substance and the "subject's" ID were in the same bedroom.

Police Officer McQuail, \$87(2)(b) arresting officer, stated that following the search warrant execution (Board Review 19), he conferred with ADA\$887(2)(b) of the Special Narcotics Prosecutor, who stated that officers had probable cause to arrest \$87(2)(b) as long as he was within a "reasonable distance" from the apartment, given the search warrant and officers' recovery of narcotics and \$87(2)(b) identification in the apartment.

when officers arrived to apprehend this individual was on the sidewalk approximately 15 feet from this individual drove down the sidewalk on his moped and then officers stopped him. It is undisputed that the individual told officers that they could search him and that Police Officer McQuail then frisked him. It is also undisputed that Sergeant Marrero searched the individual's moped vehicle before his consent was offered. This portion of the incident and allegations were captured in officers' BWC footage, as discussed below.

Police Officer McQuail's BWC footage (Board Review 06) at timestamp 1:36 shows the individual rev his moped and begin to drive away down the sidewalk. The stop then proceeds as discussed above. The individual says, "I'll let you search me, but I ain't got shit," (timestamp 2:13). Police Officer McQuail says, "Alright that's fine, then I'm going to. You just told me I could." The individual then says that Police Officer McQuail does not have to and that he (the individual) has nothing.

Sergeant Marrero's BWC footage (Board Review 04) at timestamp 0:51 shows Sergeant Marrero initially telling the unidentified individual to leave unless he wants "something to do with it." At timestamp 1:14, the individual gets on the moped and begins to drive down the sidewalk. The stop then proceeds as discussed above.

Police Officer McQuail and Sergeant Marrero were consistent in their testimonies that they believed the civilian's consent to search him was freely given.

Sergeant Marrero testified that when he arrived on the scene, the individual was approximately 10-15 feet from Sergeant Marrero had a brief interaction with the individual during which the individual said that he was doing nothing and that he did not have to provide his name. The individual was free to leave, though the individual seemed nervous and moved around a lot. When the individual got onto his moped, Police Officer McQuail stopped him, and he was no longer free to leave. Sergeant Marrero did not know why Police Officer McQuail stopped the individual or what had raised his suspicions regarding the individual. After Police Officer McQuail stopped the individual, it raised Sergeant Marrero's suspicion that the individual might have a firearm in the moped. Sergeant Marrero suspected that the firearms the officers were seeking might have been in the scooter seat because of the individual's close proximity to Sergeant Marrero and because of "solid intel" from that day and from the past that Sergents

There was no other reason why he believed that the firearm was there. Sergeant Marrero did not articulate any changes in the circumstances that led to the individual no longer being free to leave after he was previously

considered free to leave. The officers did not know whether the moped belonged to \$\frac{87(2)(b)}{2}\$ or the individual. When he arrived at the scene, the moped was "on its own," and the individual was not near or on it. Sergeant Marrero did not recall seeing \$\frac{87(2)(b)}{2}\$ touch the moped at any point and did not recall how close the moped was to \$\frac{87(2)(b)}{2}\$ when he saw it.

New York State Vehicle and Traffic Law (VTL) Section 1225 prohibits motor vehicles from driving on or across a sidewalk except when reasonable and necessary to gain access to a public highway, private way, or lands and buildings adjacent to the highway or way, in conducting work in one of those places, or to plow snow or perform another public service (Board Review 21).

New York State VTL Section 1282 7(a) prohibits the operation of electric scooters on sidewalks (Board Review 20).

Whren v. United States, 517 U.S. 806 (1996), holds that if a police officer has probable cause to detain a person temporarily for a traffic violation, the seizure does not violate the Fourth Amendment (which protects against unreasonable searches and seizures), even if the underlying reason for the stop might have been to investigate another matter (Board Review 22).

As noted above, it was undisputed that the individual rode his moped on the sidewalk in the moments before officers stop him. [887(2)(g)

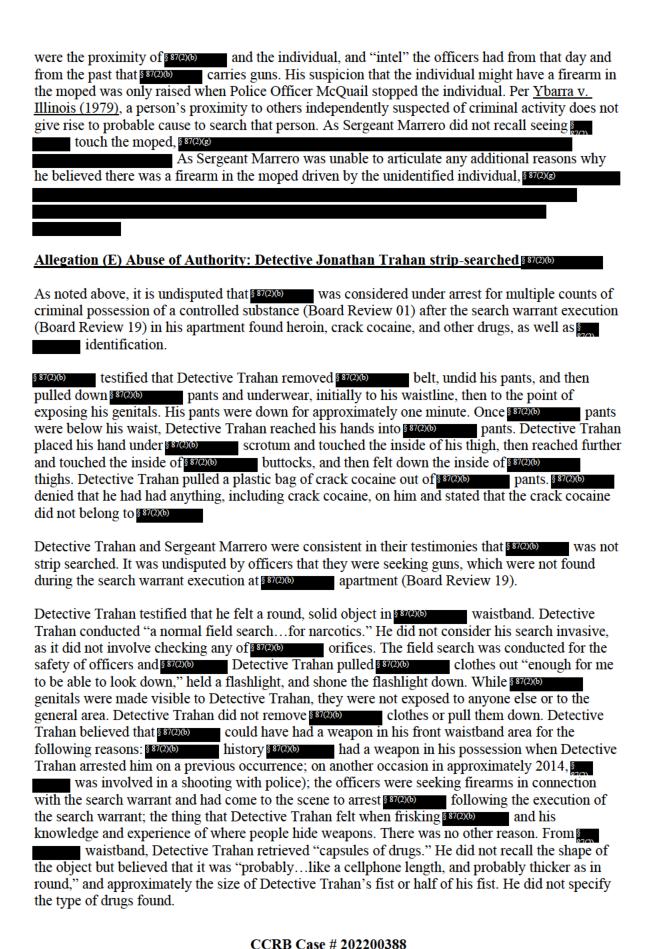
<u>United States v. Buckner</u>, 473 F.3d 551 (2007), states that valid consent to seize and search items provides an exception to the usual warrant requirement. Consent must be knowing and voluntary (Board Review 23).

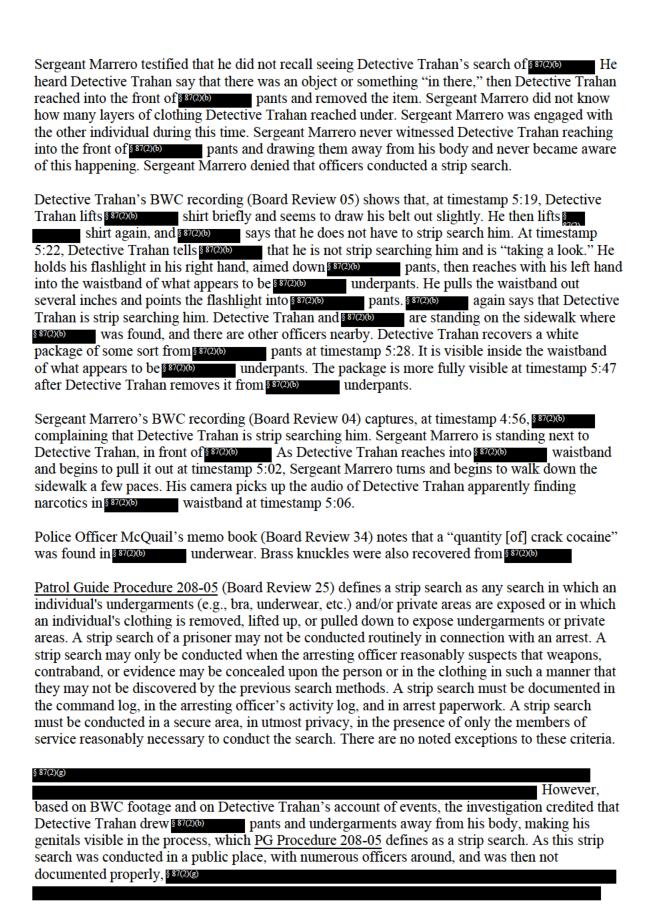
§ 87(2)(g)
When Police Officer McQuail told the individual that he
was going to search him, because the individual told him he could, the individual did not withdraw
consent. § 87(2)(g)

<u>People v. Hernandez</u>, 238 A.D.2d 131 (1997), states that there must be probable cause that a vehicle contains contraband, weapons, or evidence of a crime to justify a warrantless search of the vehicle (Board Review 24).

<u>Ybarra v. Illinois</u>, 444 US 85 (1979), states that a person's mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search that person; where the standard is probable cause, a search or seizure of a person must be supported by probable cause particularized with respect to that person, and this requirement cannot be undercut or avoided by simply pointing to the fact that coincidentally there exists probable cause to search or seize another or to search the premises where the person may happen to be (Board Review 33).

As noted above, Sergeant Marrero's only reasons for believing that a firearm was in the moped





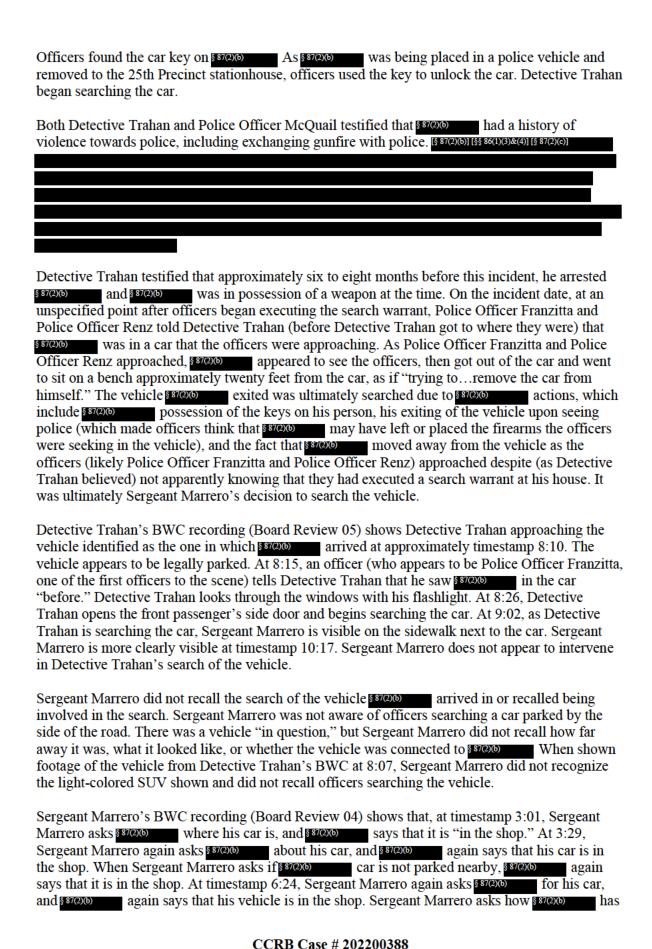
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S \$7(2)(g) Allegation (F) Discourtesy: Detective Jonathan Trahan spoke discourteously to S\$7(2)(b)
It is undisputed that, during the course of his interaction with Detective Trahan said, "Oh, you see? You see? Why the fuck you lying? I tried treating you like a man; you think I don't know what I'm looking for?"
Detective Trahan testified that his conversation with was not aggressive or disrespectful Their conversation involved "street banter." Detective Trahan "may have" used profanity while speaking to though it was not "directed at" or said disrespectfully but was "how we talk." The language he used was "street vernacular," and was used to relate to and make him understand. There was no other reason why Detective Trahan used the word "fuck" in this context.
<u>Patrol Guide Procedure 200-02</u> states that members of the service are to maintain a higher standard of integrity than is generally expected of others, and to value human life, respect the dignity of each individual, and render services with courtesy and civility (Board Review 26).
<u>DAO-DCT Case #2018-18951</u> establishes that there are certain situations where profane remarks made during a stressful or chaotic situation would not constitute misconduct (Board Review 27).
<u>DAO-DCT Case #2015-15012</u> notes that in a dynamic situation over which an officer is attempting to gain control, an officer can be excused for using discourteous language that would otherwise be inappropriate. However, language that serves no legitimate purpose but to belittle a civilian does not fall under this exception and is inappropriate (Board Review 28).
§ 87(2)(g)
was already in handcuffs, and officers outnumbered the civilians present. Detective Trahan was therefore not attempting to gain control of a dynamic situation at the time, \$87(2)(2)
Allegation (G) Abuse of Authority: Detective Jonathan Trahan searched the vehicle in which
was an occupant. Allegation (H) Abuse of Authority: Sergeant Darwin Marrero searched the vehicle in which was an occupant. was an occupant.
It is undisputed that was considered under arrest for multiple counts of criminal possession of a controlled substance (Board Review 01) after officers executed a search warrant (Board Review 19) in his apartment and found heroin, crack cocaine, and other drugs, as well as identification. The search warrant allowed officers to seek, among other things, heroin cocaine, and firearms. A vehicle was not named in the search warrant.
testified that before his arrest, he was turning off the headlights or locking the door of a car he drove to the location. borrowed the car from a friend whose legal name he did not know. saw a marked NYPD vehicle drive past him. saw went to sit on a bench, and the marked vehicle returned less than five minutes later. Officers got out and placed him under

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arrest. When saked why they were arresting him, he was told that they would talk to him about it once they reached the stationhouse.



his keys if his car is in the shop. SSY(2)(b) says that they are old keys. SSY(2)(b) is never captured acknowledging to officers that he has a car at or near the scene. Sergeant Marrero turns off his camera apparently before the vehicle search occurs.

Police Officer McQuail did not recall the search of the vehicle street arrived in or recall being involved in the search. Police Officer McQuail did not mention discussing a vehicle with ADA. Police Officer McQuail stated that, per his review of his BWC footage, the majority of his time at the scene was spent searching the area, including checking benches, bushes, under cars, in wheel wells of cars, and around covered cars.

Police Officer McQuail's BWC footage (Board Review 06) shows him searching the area around where was apprehended at approximately the time that Detective Trahan is searching vehicle; this is at approximately 01:42 in the internal timestamp of the videos. The footage does not capture him finding anything during his search. Police Officer McQuail eventually turns his camera off.

As Police Officer Renz's BWC footage (Board Review 03) begins, Police Officer Renz is in the front driver's seat of a moving vehicle. At timestamp 0:48, Police Officer Renz stops next to a park, and he and Police Officer Franzitta exit the vehicle and approach who is seated on a bench. Police Officer Renz reaches arms and place him in handcuffs. At timestamp 0:57. The officers immediately take solved arms and place him in handcuffs. At timestamp 1:33 and again at timestamp 1:53, Police Officer Renz calls over his radio for the 25th Precinct FIO unit. He provides their location and says, "We got him in cuffs." At timestamp 2:57, a male voice over the radio says, "Joe, you have the car?" This is likely addressing Police Officer Joseph Franzitta. At 3:06, another voice over the radio addresses Police Officer Renz and Police Officer Franzitta by their radio unit and asks if they have the car. Police Officer Renz says, "Negative." Police Officer Renz and Police Officer Franzitta remain with solved by the bench. They are still with solved who is apparently in handcuffs, when Police Officer McQuail is visible there at timestamp 3:45.

No other officer's BWC captures a search of the vehicle.

Detective Trahan was the only officer who acknowledged searching the vehicle and stated that he did so under Sergeant Marrero's instruction. Sergeant Marrero did not recall observing the vehicle search, but BWC captures him asking about "his car" and he is seen present while Detective Trahan searched the vehicle. As such, Allegations G and H were pleaded against Detective Trahan and Sergeant Marrero.

<u>People v. Hernandez</u>, 238 A.D.2d 131 (1997), states that there must be probable cause that a vehicle contains contraband, weapons, or evidence of a crime to justify a warrantless search of the vehicle (Board Review 24).

Arizona v. Gant, 556 U.S. 332 (2009), states that an officer is permitted to search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search, or when it is reasonable to believe the vehicle contains evidence of the offense of arrest. If there is probable cause to believe a vehicle contains evidence of criminal activity, a search of any area of the vehicle in which the evidence might be found is authorized (Board Review 29).

<u>People v. Blasich</u>, 73 NY2d 673 (1989) states that the proper inquiry in assessing the propriety of a search conducted pursuant to the automobile exception to the warrant requirement of the New York Constitution is whether the circumstances gave the police officer probable cause to search the

vehicle (Board Review 35). In this case, an individual was in his vehicle, driving aimlessly around an airport parking lot without parking. He was observed by officers. Later, when the individual failed to pay a parking fee, officers approached and observed burglar's tools on the floor of the car.

<u>People v. Galak</u>, 81 NY2d 463 (1993) states that under the "automobile exception," the police must not only have probable cause to search a vehicle, but there must also be a nexus between the arrest and the probable cause to search (Board Review 36).

As noted above, officers executed a search warrant in \$87000 apartment and found heroin, cocaine, and other drugs, in addition to \$87000 ID. The search warrant did not mention or include a vehicle. Officers then found approximately one hour later and approximately two blocks away from his apartment, and \$87000 was subsequently arrested. It is undisputed that prior to his arrest, \$87000 was either in or near the vehicle that was ultimately searched. However, at the time of his apprehension, \$87000 was sitting on a bench.
Officers never reportedly observed using the vehicle in the commission of a crime or even loading or unloading anything from the vehicle.
commission of a crime of even loading of unloading anything from the vehicle.
Civilian and Officer CCRB Histories

•	§ 87(2)	(b)

- Police Officer McQuail has been a member of service for six years and has been a subject in three additional CCRB complaints and six additional allegations, of which two were substantiated:
 - 202105864 involved substantiated allegations of force (physical force) and a threat of force (verbal or physical) against Police Officer McQuail. The Board recommended Charges, and the NYPD has not yet imposed discipline.
 - S 87(2)(g)
- Sergeant Marrero has been a member of service for fourteen years and has been a subject in four additional CCRB complaints and nine additional allegations, none of which were substantiated.
- Detective Trahan has been a member of service for nine years and has been a subject in four additional CCRB complaints and four additional allegations, none of which were substantiated.

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- As of October 31, 2022, the New York City Office of the Comptroller had no record of a Notice of Claim being filed regarding this incident (Board Review 31).

Squad: 4			
Investigator:	Rachel Murgo	SI Rachel Murgo 23 Fe	bruary 2023
_	Signature	Print Title & Name	Date
Squad Leader: _	Raquel Velasquez	IM Raquel Velasquez	2/24/2023
	Signature	Print Title & Name	Date
Daviana			
Reviewer: _	Cionatura	Print Title & Name	Doto
	Signature	Pilit Title & Name	Date